

Stage 1

Making a record

- What if the court finds no prima facie case? Do you stop?
 - NO
 - Cal Supreme latest pronouncement → *People v. Scott* (June 8, 2015)
61 Cal.4th 363
 - Ideal Record: p. 349
 - » (1) Trial court finds no prima facie case;
 - » (2) Prosecutor states reasons for excusing the juror for the record
 - » (3) the prosecutor provides nondiscriminatory reasons, and
 - » (4) the trial court determines that the prosecutor's nondiscriminatory reasons are genuine
- If this is present, an appellate court should begin its analysis of the trial court's denial of the *Batson/Wheeler* motion with a review of the first-stage ruling.

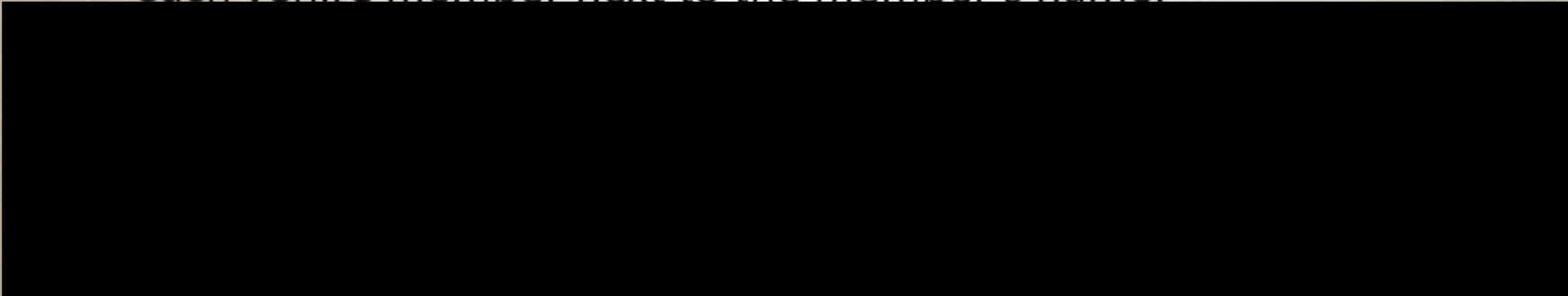
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- **Exception** → If you give a reason that is discriminatory on its face, the court is not going to ignore that at first stage review.

Stage 1

Should Your Notes Document Race?

- *Miller-El v. Dretke* (2005) 545 U.S. 231: In a case tried pre-Batson, USSC found notes documenting race are evidence of discrimination.
 - *People v. Lenix* (2008) 44 Cal.4th 602, 671, fn. 12: “We emphasize, however, that post *Batson*, recording the race of each juror is an important tool to be used by the court and counsel in mounting, refuting or analyzing a *Batson* challenge.”
 - *Green v. Lamarque* (9th Cir. 2008) 532 F.3d 1028: “[T]he prosecutor had noted the race of each venire member he struck from the jury pool; when the trial judge asked him who he struck and why, the prosecutor was able to read off a list, and he had noted the race of each venire member next to the member’s name.”
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Stage 2

The Non-Discriminatory Reasons

- You give non-discriminatory reasons for exercising the strike(s)
 - Actual reasons
 - No longer objective, this is subjective

“We emphasize that the prosecutor's explanation need not rise to the level justifying exercise of a challenge for cause”

➤ (*Batson v. Kentucky, supra*, 476 U.S. at p. 97.)

- “The party seeking to justify a suspect excusal need only offer a genuine, reasonably specific, race or group-neutral explanation related to the particular case being tried.”

➤ (*People v. Arias* (1996) 13 Cal.4th 92, 136.)

Stage 2

The Non-Discriminatory Reasons

- Justify each individual juror challenged during the Wheeler/Batson motion
 - On appeal, failure to provide adequate reasons even for one of a cognizable group requires reversal. (*People v. Silva* (2001) 25 Cal. 4th 345.)

